

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PATRICIA CORRELL,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. DSEP-02-0001

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held at the Office of the Attorney General in Spokane, Washington, on February 13, 2003 and February 20, 2003. WALTER T. HUBBARD, Chair, reviewed the file and record and participated in the decision in this matter.

1.2 **Appearances.** Appellant Patricia Correll was present and represented herself *pro se*. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disability separation.

1.4 **Citations Discussed.** Smith v. Employment Security Dept., PAB No. S92-002 (1992); WAC 356-05-102; WAC 356-35-010.

## II. FINDINGS OF FACT

2.1 Appellant Patricia Correll was a DDS Adjudicator 3 and permanent employee of Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 22, 2002.

2.2 In 1992, Appellant began working as a DDS Adjudicator 2 in the Division of Disability Determination Services of the Department of Social and Health Services. She later promoted to a DDS Adjudicator 3. As a DDS Adjudicator, Appellant determined the eligibility of claimants for disability benefits.

2.3 Appellant's position adjudicated initial, reconsideration, and continuing disability reviews and other special claims for social security disability and non-grant medical assistance per Social Security Administration rules and regulations. The essential duties of Appellant's position were listed as:

- Identify all sources and obtain all relevant medical and vocational information for each claim.
- Analyze the sufficiency and evidence available and obtained.
- Assess functional limitations caused by the medically determinable impairments.
- Consult with staff doctors and experts.
- Determine eligibility using sequential evaluation.
- Determine continuing eligibility using the medical improvement standard.
- Communicate with applicants.
- Document analysis and decisions.

1 2.4 In late 1997, Dr. Ben Thrower diagnosed Appellant with multiple sclerosis. Appellant  
2 suffered from low back pain, difficulties with concentrating, and extreme fatigue. On October 17,  
3 1997, Dr. Thrower approved Appellant's return to work after a lengthy absence. Dr. Thrower  
4 indicated that Appellant was able to work full-time with accommodations of an electric stapler, an  
5 electric hole punch, a raised screen, a swing keyboard holder, a headset for her telephone, a  
6 designated sick room for rest breaks, and significant flexibility in work hours. The department  
7 provided the accommodations as requested.

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9 2.5 On November 14, 1997, Dr. Thrower encouraged the department to consider home  
10 stationing for Appellant if possible. The department did not pursue home stationing at that time  
11 because Dr. Thrower indicated Appellant was still able to work full-time in the office. Furthermore,  
12 the necessary computer technology was not available for a home station arrangement.

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14 2.6 On August 3, 1998, Appellant's condition precluded her from working and the department  
15 approved her to be on leave. On October 29, 1998, Dr. Thrower approved Appellant to return to  
16 work on a part-time basis effective December 1, 1998. Appellant was unable to work full-time  
17 because she was suffering from increasing fatigue and the inability to work in a sedentary position  
18 for a full eight hours. Therefore, the department approved a schedule of 20 hours per week.

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20 2.7 Appellant was off work again from December 3, 1998 through August 2, 1999. On August  
21 3, 1999, Appellant once again returned to work on a part-time basis. The department adjusted  
22 Appellant's normal case assignment to half the workload so that it was proportional to the half-time  
23 schedule. The department approved Appellant's request for a flexible work schedule and rest  
24 breaks  
25 as needed. As Appellant transitioned back to work, the department provided re-orientation training  
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1 and computer systems refresher training. The department also approved Appellant's request to be  
2 assigned a primary workload of less complicated cases to reduce her stress and fatigue.

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4 2.8 Due to her condition, Appellant required noise control, lighting adjustments, and cool  
5 temperatures to reduce fatigue. Therefore, Appellant was no longer able to perform the essential  
6 functions of her position in the office setting. Appellant was on leave again from November 1999  
7 through August 2000.

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9 2.9 In December 1999, the department began exploring home assignment for Appellant. The  
10 department faced extensive and ongoing technical difficulties with computer connections, computer  
11 hardware, and computer software while arranging home assignment. These difficulties took eight  
12 or nine months to resolve.

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14 2.10 On August 29, 2000, the agency was able to provide home stationing for Appellant and she  
15 began to work part-time from home. On September 13, 2000, the department approved Appellant's  
16 request to begin a "team case management" arrangement with an assigned partner on a 90-day trial  
17 basis. On September 26, 2000, the department provided Appellant with office equipment, a work  
18 chair, a file cabinet, and a personal computer.

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20 2.11 The department experienced ongoing technical problems with the home assignment from  
21 August 2000 through March 2001. Staff made numerous attempts to resolve those problems so that  
22 Appellant could continue to perform her job duties from home.

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24 2.12 In October 2000, the department installed two phone lines in Appellant's home, one for  
25 client toll free access and one for computer access.

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2 2.13 In December 2000, the department determined that the “team case management”  
3 arrangement was unsuccessful and terminated the arrangement.  
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5 2.14 From December 14, 2000 through January 2, 2001, the department stopped Appellant’s case  
6 assignment to allow for training on the new computer system and to work out technical difficulties.  
7 During January 2001, the department began assigning cases to Appellant again and accommodated  
8 her need to have the cases shipped to her in smaller boxes.  
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10 2.15 On February 15, 2001, the department established a Federal-Express account to ship boxes  
11 directly between the office and Appellant’s home so she could stop taking boxes to the post office.  
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13 2.16 Appellant was not able to complete the expected six to seven eligibility determination cases  
14 assigned to her per week, and her workload continued to become increasingly backlogged.  
15 Appellant’s disability did not affect her ability to perform any single required task, however, it  
16 affected her ability to achieve the performance and production standards of her position even with  
17 accommodations.  
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19 2.17 During March 2001, the department identified the following unresolved problems with the  
20 home stationing arrangement:  
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- 22 • Lack of on-site technical support.
- 23 • Lack of phone support during hours other than 8:00 a.m. to 5:00 p.m.
- 24 • Computer set up and log on time.
- 25 • Difficulties accessing the system and maintaining on-line connection.
- 26 • Unavailability of system during evening hours requested by Appellant.
- Time consuming mistakes by all parties involved in the special handling of Appellant’s cases.

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2 2.18 On March 29, 2001, Tony Jones, Director of Disability Determination Services, concluded  
3 that Appellant's home assignment was not successful and the accommodation was not a viable  
4 option.

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6 2.19 John Black, Human Resource Administrator, conducted a search for another position for  
7 Appellant at the same or lower salary level for which she was qualified and that met the necessary  
8 reasonable accommodation needs. Between August 2001 and January 2002, Mr. Black conducted  
9 seven unsuccessful vacancy searches. There were no vacant part-time positions available.

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11 2.20 Appellant did not indicate that there had been a significant change in her health or physical  
12 capabilities. By letter dated January 4, 2002, Tony Jones, the Director of Disability Determinations  
13 Services, notified Appellant of her separation from the DDS Adjudicator 3 position effective March  
14 8, 2002.

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16 **III. ARGUMENTS OF THE PARTIES**

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18 3.1 Respondent argues that the department made numerous and extensive efforts for almost four  
19 years to accommodate Appellant's disability and the department has complied with WAC 356-35-  
20 010. Respondent asserts that Appellant could not perform the essential functions of her position  
21 with or without accommodation. Respondent states Appellant simply could not keep up with the  
22 work assigned to her, even though the department adjusted the volume of work to accommodate her  
23 part-time status. Respondent argues that the amount of work Appellant completed after being  
24 accommodated could not justify a half-time position within the department. Respondent asserts the  
25 department could not find another position that Appellant was qualified for, even though numerous  
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1 vacancy searches were completed. Respondent states that a disability separation was the only  
2 recourse.

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4 3.2 Appellant acknowledges that Respondent “did everything they could with the knowledge  
5 they had to accommodate” her. Appellant argues, however, that during home stationing, the work  
6 partnership was sabotaged, she was given a dysfunctional computer system, and she was expected  
7 to do the same work as others with functioning equipment. Additionally, Appellant argues that she  
8 was assigned the more complicated cases that took more time to complete. Appellant asserts that if  
9 she had been home stationed when it was first recommended in 1996, she could have succeeded  
10 because she still had the energy at that time to address the problems as they came up. Appellant  
11 states that when home stationing was finally approved, she was asked to problem solve, monitor  
12 and communicate all the problems in addition to doing her work.

#### 13 14 IV. CONCLUSIONS OF LAW

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16 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter.

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18 4.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of  
19 supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving  
20 that Appellant was unable to perform the duties of the position as specified in the letter of  
21 separation and that reasonable accommodation cannot be provided. Smith v. Employment Security  
22 Dept., PAB No. S92-002 (1992).

23  
24 4.3 The issue here is whether Respondent complied with the provisions of WAC 356-35-010  
25 when it separated Appellant from her position as a DDS Adjudicator 3 due to her disability. WAC  
26 356-05-120 defines a disability as “[a]n employee’s physical and/or mental inability to perform

adequately the essential duties of the job class.” In this case, Appellant was unable to perform the essential duties in order to achieve the production standards required of her position, and she currently remains disabled. Therefore, Appellant’s condition meets the definition of a disability.

4.4 WAC 356-35-010(1) provides, in part, that an appointing authority “may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. . .” Respondent undertook many steps from October 1997 through March 2001 to accommodate Appellant. Despite these good faith efforts, Appellant was unable to perform the essential duties of her position as a DDS Adjudicator 3. Furthermore, Respondent had no obligation to reallocate or alter the essential functions of Appellant’s position. Therefore, the appointing authority reasonably concluded that accommodation could not be provided to allow Appellant to perform the essential duties of her position.

4.5 Finally, as a part of its accommodation process, Respondent conducted numerous vacancy searches for part-time positions for which Appellant qualified; however, none existed. We conclude, therefore, that Respondent made good faith efforts to accommodate Appellant.

4.6 Respondent has met its burden of proof that Appellant could not perform the essential duties of her position and that reasonable accommodation could not be provided. Therefore, the disability separation of Patricia Correll should be affirmed and her appeal denied.



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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Patricia Correll is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair